

OPINION
63-179

November 21, 1963 (OPINION)

PUBLIC MONEYS

RE: Investments - Limitations

This office acknowledges receipt of your letter of November 18, 1963, which was referred to me for reply. Your letter reads as follows:

"We have had several instances of State Institutions of Higher Learning asking us to invest their funds temporarily in Certificates of Deposit, Treasury Bills, and/or Government Bonds. In some cases, we are uncertain as to whether these are appropriated funds, institutional funds, or a commingling of the funds. We would appreciate your feelings as to what guide we should use in determining whether these funds can be legally invested."

Section 186 (1) of our State Constitution reads in part:

"All public moneys, from whatever source derived shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau or institution of the State receiving the same, to the State Treasurer, and deposited by him to the credit of the State, and shall be paid out and disbursed only pursuant to appropriations first made by the Legislature; * * *." (Emphasis supplied).

Section 6-09-07 of the North Dakota Century Code is as follows:

"State funds must be deposited in Bank of North Dakota. All state funds, and funds of all state penal, educational and industrial institutions shall be deposited in the Bank of North Dakota by the persons having control of such funds."

See also Section 21-04-02 of the North Dakota Century Code, declaring that "Public funds belonging to or in the custody of the state shall be deposited in the Bank of North Dakota."

In State ex rel Lemke v. District Court of Stutsman County, 49 N.D. 27; 186 NW 381, our Supreme Court held that it is the duty of the State Treasurer to deposit all state and state institutional funds which come into his possession in the Bank of North Dakota.

It is our understanding that a large portion of the moneys belonging to the State of North Dakota and now on deposit in the Bank of North Dakota are represented by certificates of deposit which bear the usual rate of interest, but that there is a substantial amount in open account in said bank which pays a small amount of interest on daily balances. Thus we see that the state funds in the hands of the State Treasurer are bringing in some returns by way of interest payments, and at the same time they are subject to uses which may properly be made of such funds under the laws of the state.

You are familiar with the provisions of Chapter 21-10 of the North Dakota Century Code, 1963 Pocket Supplement, which created a State Investment Board. Section 21-10-06 defines the funds which come under the supervision of this board in so far as investments are concerned, and Section 21-10-07 spells out the type of securities in which the said board may invest the funds set out in 21-10-06. The funds held by the State Institutions of Higher Learning are not under the control of this newly created State Investment Board.

Tying in the sections hereinbefore quoted with Section 186 of the Constitution, we must reach the conclusion that there is no grant of power, expressly or impliedly, by the State Constitution or statutes to the State Treasurer to invest appropriated or so-called institutional funds in certificates of deposit, treasury bill, and/or government bonds, except that funds in the hands of the State Treasurer could be invested in certificates of deposit issued by the Bank of North Dakota. This view is based upon the well known and accepted legal principle that an official of the State has only those powers granted to him by the Constitution or the laws of the State.

HELGI JOHANNESON

Attorney General